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RECENT IMPORTANT DECISIONS

AGENCY—RATIFICATION—KNOWLEDGE NECESSARY.—Defendant, a married woman, was proprietor of a drug store, and her husband was her general agent in charge of the same. Plaintiff's agent, while endeavoring to sell a bill of goods to the agent of defendant, was expressly notified by defendant that she would not buy any goods from plaintiff's house, and told him not to sell any goods to her agent. Notwithstanding this express notification and prohibition, goods were sold and were received by defendant's agent, placed on the shelves of the store and disposed of in the regular course of trade. An action was brought for the price of these goods. The question was, whether under the circumstances, there was a ratification of the transaction. The lower court instructed the jury in effect, that if the goods were delivered into the pharmacy and were sold by the employes of the defendant and the proceeds were put into her possession, there was a ratification by her. *Held*, that this instruction was erroneous, on the ground that in order to constitute a ratification it must appear that defendant had knowledge of all the material facts, and, under the circumstances of this case, a receipt and sale of the goods by her agent would not bind defendant. *Schollay v. Moffitt-West Drug Co.* (Colo.) 67 Pac. Rep. 182.

There may be a ratification by receiving the profits of an unauthorized transaction; but knowledge of all the material facts is essential. *Craighead v. Peterson*, 72 N. Y. 279; *Herring v. Skaggs*, 73 Ala. 446. In this case the agent of the plaintiff had been expressly notified not to sell goods to the defendant's agent; therefore plaintiff was charged with notice not to sell. *Flower v. Elwood*, 66 Ill. 438. There was no reason to believe that this prohibition had been withdrawn, and by acting in disregard of it and selling the goods, a fraud was perpetrated upon the defendant. Where there is collusion between the agent and the party seeking to hold the principal, notice to the agent is not notice to the principal. *Innerarity v. The Bank*, 139 Mass. 332.

AGENCY—UNDISCLOSED PRINCIPAL—DEFENCE AGAINST AGENT.—D. F. Holden, acting really as the agent of one D. O. Coles, but without disclosing that fact, purchased in his own name from the defendant railroad company, a mileage book, good for use by those only whose names should be inserted on the cover by defendant's agent. Plaintiff signed the contract in the back part of the book in his own name, but the defendant's agent in inserting the name on the cover wrote it by mistake "A. F. Holden." Plaintiff used the book for one journey, and then delivered it to Coles, the true owner, paying him for the mileage used. Afterwards, in order to make another journey on the ticket, plaintiff hired it of Coles, and Coles, without authority, inserted the name of the plaintiff's daughter on the cover so that she might go with him. When plaintiff presented the book in payment of fare for himself and daughter, the conductor refused to receive it, and caused the plaintiff's arrest. In an action by the plaintiff to recover damages, *Held*, that he could not recover. *Holden v. Rutland Ry. Co.* (1901) Vt., 50 Atl. Rep. 1096.

The court adopted the well known rule that upon contracts, not under seal, made by an agent for an undisclosed principal, either the principal or the agent may sue; (MECHEM ON AGENCY, § 755; DICEY ON PARTIES, 136; *Sims v. Bond*, 5 B. & Ad. 393;) but applied the other rule equally well settled, that if the agent sues in his own name, the defendant may make any defense which he may have, either against the agent himself or against the principal. (MECHEM ON AGENCY, § 762; DICEY, PARTIES, 142; 2 SMITH'S LEAD. CAS. 428.) The insertion of the name of the plaintiff's daughter was a material alteration, and was designed to promote a fraud upon the defendant for the plaintiff's advantage. This defence being available against the plaintiff in the action in his own name, he could not recover.

BAILEMENTS—ACTION BY BAILEE AGAINST THIRD PERSON.—In an action against a third person by whose negligence property in the hands of a bailee was destroyed, *Held*, that the bailee can recover the value of the goods, on the ground that possession is title both as regards the right to bring the action and as to the quantum of damages; though previous to such recovery he would have a good answer to an action by the bailor, the liability over of the bailee to the bailor being not the ground of the bailee's right to recover but a consequence of the right. *The Winkfield*, [1902] Pr. Div. 42, 71 L. J. R., P. D. 21.